# MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

## Held in Salon 5 of the JW Marriott Scottsdale Camelback Inn

5402 E Lincoln Drive

Scottsdale, Arizona 85253

Friday, August 10, 2018 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Scott P. LeMarr

Commissioner

Steven J. Krenzel

Commissioner

James Ashley

Director

Stacey Rogan

Assistant Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief / Public Information Officer

Renee Pastor Jessie Atencio Self Insurance

Michael Mosesso

ADOSH Director

Gaetano Testini

Chief Administrative Law Judge Administrative Law Judge

Michael Durso

Investigations Supervisor

Michelle Rassi

Investigator

Kara Dimas

Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Pablo Valverde with Argot Safety; Wayne Carroll and Khalliduh Simon with Fondomonte; Dave Skierkowski, Jose Soto and Mayra Rivas with Eagle Roofing; and Michael Fassett with Snell & Wilmer.

#### Approval of Minutes of July 26, 2018 Regular Meeting.

The minutes were tabled until the next meeting.

#### Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

## a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CRP-17/18-0224

Centrik Roofing, LLC

2. 2C-17/18-0826

Dulceria Albertos

3. 2C-17/18-0831

The Shutter Source LLC

## b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Arizona Municipal Pool Risk

#### 2. Walmart Associates, Inc.

Chairman Schultz reviewed the Consent Agenda and requested (a)(3) The Shutter Source LLC and (b)(2) Walmart Associates, Inc. be moved to the regular agenda.

Commissioner Krenzel moved to approve the remaining items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

## Approval of Proposed Civil Penalties Against Uninsured Employers.

The Shutter Source LLC - Chairman Schultz noted that The Shutter Source has a proposed penalty of \$1,000. He noted the significant number of employees at risk by the employer's failure to provide workers' compensation insurance which is a violation putting many employees at risk.

Commissioner LeMarr, Chairman Schultz and Ms. Rogan discussed what the Legal Division will do regarding follow up for an employer of this size.

Commissioner LeMarr moved to approve the Civil Penalty for The Shutter Source LLC and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

#### Discussion and Action of Application for Self-Insurance Authority.

Walmart Associates, Inc. — Chairman Schultz noted the current experience modification for Walmart is higher than the Commission would like see. Generally the self-insured employers are expected to be exemplary in the protection of the employees. He noted that their experience modification factor has been dropping each year and is on a positive trend. He wanted to communicate to Walmart that they are still on the radar and he expects continued improvement.

Commissioner Krenzel moved to approve Walmart Associates, Inc.'s application for self-insurance authority and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Mr. Atencio started with the discrimination matter. Mr. Ashley noted that we would have to note an Agenda change to go out of sequence. Chairman Shultz requested we start with the citations and penalties. Mr. Atencio presented the citations beginning with True-Built Construction.

True-Built Construction LLC 6148 S Reseda St.,

Site Location:

Years in Business: Empl. Covered by inspection:

Complaint

10 3

Gilbert, AZ 85207

7517 E Hobart St.

Mesa, AZ 85207

Inspection No:

T1999 - 1299156

Inspection Date:

03/05/2018

#### REPEAT-SERIOUS - Citation 1 - Item 1a -

a) 7517 E Hobart St., Mesa, AZ: Three employees were installing felt paper on a low sloped roof of a single-story residential home, 8' 2", above the ground without a fall protection system installed.

True-Built Construction, LLC was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent standard 1926.501(b)(10), which was contained in ADOSH inspection number 1179663, citation 1, item number 1a, and was affirmed as a final order on 11/21/16, was abated on 9/26/16 with respect to a workplace located at 15600 N Black Canyon Hwy., Phoenix, AZ 85023. 29 CFR 1926.501(b)(10)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

## REPEAT-SERIOUS - Citation 1 - Item 2 -

a) 7517 E Hobart St., Mesa, AZ: Fall protection training was not provided for three employees who were exposed to fall hazards.

True-Built Construction, LLC was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent standard 1926.503(a)(1), which was contained in ADOSH inspection number 1179663, citation 1, item 1b, and was affirmed as a final order on 11/21/16, was abated on 9/26/16 with respect to a workplace located at 15600 N Black Canyon Hwy., Phoenix, AZ 85023. 29 CFR 1926.503(a)(1)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs. He noted that these are repeat violations.

Commissioner Krenzel and Mr. Atencio discussed the lack of training for the employees and foreman. They discussed the written safety and health program. Mr. Atencio noted they did not receive any documentation of training on standards.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Burlingame Industries Incorporated dba

Referral

Eagle Roofing Products

Years in Business:

18

4602 W Elwood St.,

Empl. Covered by inspection:

20

Phoenix, AZ, 85043

4602 W Elwood St.

Phoenix, AZ 85043

Inspection No:

Site Location:

W0250 - 1301654

Inspection Date:

03/15/2018

<u>SERIOUS</u> – Citation 1 - Item 1 –

a) Line 10, Wet and Dry station: Employees were exposed to the Tile Machine, model and serial numbers unknown, cutting head that lacked an adequate guard. 29 CFR 1910.212(a)(1)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,250.00

#### SERIOUS – Citation 1 - Item 2 –

a) Line 10, Wet and Dry station: Employees were exposed to unguarded rotating chains and sprockets of the Tile Machine, model and serial numbers unknown.

b) Line 11, Wet and Dry station: Employees were exposed to unguarded rotating chains and sprockets of the Tile Machine, model and serial numbers unknown. 29 CFR 1910.219(f)(3)

Div. Proposal - \$5,000.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs. Mr. Atencio corrected the proposed amount for Citation 1, Item 1 division proposal penalty should be \$2,250 for a total penalty of \$6,750.

Commissioner Krenzel and Mr. Atencio discussed the injury and the grouping being the same instance versus when it would be two different citations.

Chairman Schultz and Mr. Atencio discussed the cleaning process, photograph 1, location of the conveyor belt, and compressed air.

Commissioner LeMarr, Mr. Atencio, and Chairman Schultz discussed abatement.

Mr. Soto noted they have been in business since 1999 and this was the first incident on the lines. He explained that the employee was cleaning the guard. He noted their low experience modification factor and safety record.

Commissioner Krenzel and Mr. Atencio discussed guarding and the OSHA standards.

Chairman Schultz, Mr. Soto, and Commissioner LeMarr discussed abatement and new guarding on the lines.

Commissioner LeMarr and Mr. Soto discussed the lock out/tag out procedure.

Commissioner LeMarr moved to approve the penalty amount of \$6,750 and Commissioner Krenzel seconded. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Soto for his abatement efforts and keeping people safe.

Fondomonte Arizona, LLC

Referral

44376 Vicksburg Rd.,

Years in Business:

4 100

Salome, AZ 85348

Empl. Covered by inspection:

Site Location:

44376 Vicksburg Rd., Salome, AZ 85348

Inspection No:

W0250 - 1301217

Inspection Date:

03/14/2018

## SERIOUS - Citation 1 - Item 1 -

a) Hay Press Machine 1: Two employees walked along the top of a 7ft 3in Hay Press, model #3546 and serial #C790214 without fall protection. 1910.23(c)(1)

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

#### SERIOUS – Citation 1 - Item 2 –

a) Hay Press Area: Two employees had been trained in LOTO, however the procedures were not followed by management and employees when retrieving tools from the top of the operating hay press machine. 29 CFR 1910.147(c)(7)(i)

Div. Proposal - \$5,000.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$7,250.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties.

Commissioner Krenzel and Mr. Atencio discussed the guarding on the press and abatement, guarding by location, and walking/working surface standards.

Mr. Carroll noted he has worked in the safety industry for many years. He stated that the biggest thing is commitment and communication and that they are a SHARP site. He noted the week before the incident there was a lock out/tag out training. He stated they took their accountability program and policy that was in place and raised the bar.

Ms. Simon noted the commitment to the employee including that he has a job for life. She stated that the employee is recovering and doing great. Additionally, she noted that they did a fundraiser to help him and his family.

Mr. Carroll noted he wanted to communicate the effort and ongoing commitment to make sure this does not ever happened again.

Commissioner Krenzel moved to approve the citation and proposed penalties as presented. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Shultz thanked Mr. Carroll for their commitment to the employee. Mr. Carroll noted the condition of the employee.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

#### 16-2865-12 - Walikainen vs. West Abrazo Hospital

Mr. Atencio explained that a findings letter was sent to Mr. Walikainen on March 17, 2017. Mr. Atencio summarized Mr. Walikainen's request for reconsideration citing new evidence including a decision by Department of Economic Security Administrative Law Judge Rosen on a

DES appeal case for unemployment benefits and that West Abrazo Hospital used a subjective attendance policy. Mr. Atencio noted the statute for DES does not apply to the Retaliation Statute under A.R.S. § 23-425. Mr. Atencio noted that it was not within OSHA's safety and health and that ADOSH does not find anything that shows that safety and health have been compromised. Mr. Atencio and Ms. Rassi noted the several attempts to reach the complainant to get more information.

Mr. Atencio summarized the investigation report regarding handling of safety concerns and employment records. Ms. Rassi added that Mr. Walikainen did not follow company directives.

Mr. Atencio recommended that based on the ADOSH ROI that ADOSH's original decision to dismiss the case on the merits be upheld.

Chairman Schultz noted that the only issues to consider are the issues on the appeal. The issues relative to the board were heard and there was ample documentation of the employer's work to resolve those issues, as well as all of the information about the attendance and the process. All that is needed to address is whether or not there is sufficient, new and additional evidence presented to cause a reconsideration of the original decision. He noted that the report does an appropriate job at addressing each one of the new issues and reinforces the original decision.

Commissioner LeMarr concurred and could not find anything that would sustain a reopening of this process.

Commissioner LeMarr moved to deny the request for appeal of ADOSH case 16-2865-12. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

#### 16-2865-12 - Walikainen vs. West Abrazo Hospital

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge Position, discussion regarding interview questions, second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to obtain legal advice and to discuss the candidates and the salary.

Judge Mosesso noted that he has had another opening in the ALJ Division and would like to fill it with one of the candidates from the recent, previously compiled list. He noted the information that was provided is the same and that candidate #5 was offered the position and has accepted. For the new open position he would like to offer candidate #4 the other position and if candidate #4 is not available he would like to be able to offer candidate #3 the position.

Commissioner LeMarr moved to authorize Judge Mosesso to offer the vacant ALJ position to Candidate #4, and, if unavailable, to Candidate #3. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed the success of this year's Claims seminar and the addition of an interactive polling feature that was producing high participation and helpful results.

Mr. Ashley noted that the 4th Annual Day at the Capitol has just been set and will be held on March 27, 2019.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through September 2018. Commissioner Krenzel noted he may need to call in for the September 20th meeting.

Mr. Atencio noted the new VPP Brasfield & Gorrie celebration will be held on September 10<sup>th</sup> in Tucson.

#### Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:03 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary